

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

2014 AUG 28 PM 12:49
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN

JURY DEMAND

II. JURISDICTION AND VENUE

4. The Watershed Association brings this enforcement action under the citizen suit provision of the Clean Water Act, 33 U.S.C. § 1365. This Court has subject matter jurisdiction over this action pursuant to 33 U.S.C. § 1365, 28 U.S.C. §§ 1331, 2201 and 1355, and it has personal jurisdiction over the parties.

5. The Watershed Association has complied with the statutory notice requirements under § 505 of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A), and the corresponding regulations at 40 C.F.R. §§ 135.2 and 135.3. On January 13, 2014, Plaintiff provided Defendant with notice of the violations specified in this Complaint and of Plaintiff's intent to file suit after sixty days should those violations continue. This notice was effectuated by sending a letter ("60-day Notice") via email and certified mail to:

Cartwright Creek, LLC
1551 Thompson's Station Road West
Thompson's Station, TN 37179

Mr. Bruce Meyer
Operations Manager, Regional Manager & Registered Agent
Cartwright Creek, LLC
1551 Thompson's Station Road West
Thompson's Station, TN 37179

Sheaffer Wastewater Solutions, LLC
Manger, Cartwright Creek, LLC
800 Roosevelt Road, Suite A120
Glen Ellyn, IL 60137

Sheaffer International, LLC
c/o Corporation Service Company
2711 Centerville Rd, Suite 400
Wilmington, DE 19808

True and correct copies of the 60-day notice letter and return receipts are attached and incorporated in their entirety by reference as **EXHIBIT 1**.

6. The Watershed Association also sent a copy of the 60-day Notice to the Administrator of the United States Environmental Protection Agency ("EPA"), the Acting Regional Administrator of EPA Region 4, and the Commissioner of the Tennessee Department of Environment and Conservation ("TDEC").

7. More than sixty days have passed since the letter was served on Defendant, as well as on state and federal agencies.

8. Upon information and belief, the EPA has neither commenced nor is diligently prosecuting any court action or administrative proceeding to redress the violations described in the 60-day Notice and alleged in this Complaint.

9. In April 2014, TDEC issued a Commissioner's Order against Defendant to address violations of the Tennessee Water Quality Control Act, Tenn. Code Ann. § 69-3-101 *et seq.* However, the Tennessee Water Quality Control Act is not comparable to the Clean Water Act so as to trigger the Section 1319(g)(6) bar. Further, neither Tennessee's Water Quality Control Board nor the TDEC rise to the level of a Federal or State court so as to preclude enforcement by this citizen's suit.

10. The violations identified in the 60-day Notice that are the subject of this action are continuing at this time and are reasonably likely to continue in the future.

11. Venue is proper in this Court pursuant to 33 U.S.C. § 1365(c)(1) because the source of the violations is located within this judicial district. The Cartwright Creek-Grasslands Sewage Treatment Plant is located on the Harpeth River in the River Rest Subdivision in Franklin, Williamson County, Tennessee 37069. Its mailing address is 1551 Thompson's Station Rd. West, P.O. Box 147, Thompson's Station, TN 37179, but it is located near Cartwright Creek at the end of Recreation Road, Franklin, TN 37069. NPDES Permit No. TN0027278 authorizes

the discharge of wastewater from Outfall 001 into the Harpeth River at river mile 68.8. The facility and Outfall 001 at river mile 68.8 are where a majority of the violations identified in this letter have occurred. Violations also occurred at overflow sites (*i.e.*, where sewage was released from any portion of the collection, transmission, or treatment system other than through permitted outfalls), as more specifically described *infra*, also within this judicial district.

12. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because Defendant is a business operating within this judicial district, and pursuant to 28 U.S.C. § 1391(b)(2) because the events and omissions giving rise to the claims alleged in this complaint—that is, the Clean Water Act violations—occurred in and around the Harpeth River, within this judicial district.

III. PARTIES

13. Plaintiff Harpeth River Watershed Association is a “citizen” pursuant to the Clean Water Act, capable of bringing a citizen suit under the citizen suit provisions of the Clean Water Act, 33 U.S.C. § 1365.

14. The Watershed Association is a § 501(c)(3) non-profit public interest organization with its headquarters in Brentwood, Tennessee. The Watershed Association and its members are concerned about contamination of the Harpeth River and about threats to wildlife and wildlife habitat posed by the pollutants in Defendant’s discharge. They live, work, fish, swim, boat, view wildlife, engage in nature study and scientific study, and participate in other forms of recreation in and around the Harpeth River; Defendant’s discharges impair these uses.

15. Defendant Cartwright Creek, LLC is a corporation doing business in Williamson County, Tennessee and is a “person” subject to suit under the Clean Water Act. 33 U.S.C. § 1362(5). *See also* 33 U.S.C. § 1362(4). Defendant, a Tennessee manager-managed limited

liability corporation, has its principal office in Glen Ellyn, Illinois. Sheaffer International LLC, is Defendant's manager, which is a corporation owned by Stahelin Enterprises, Inc., an Illinois corporation.

16. Defendant owns and operates the Cartwright Creek-Grasslands Sewage Treatment Plant, the facility and sewer system that constitute the source of the violations described below.

17. Defendant's Sewage Treatment Plant has a design flow of 0.25 million gallons per day ("MGD").

IV. FACTUAL BACKGROUND

18. The Harpeth River flows in a generally southeast-to-northwest direction for 125 miles through middle Tennessee and is partially designated as a State Scenic River. Tenn. Code Ann. §§ 11-13-101(b); 11-13-104. The Harpeth River is a seasonably variable stream and experiences extremely low flow conditions of less than one cubic foot per second during average summer months.

19. The stretch of the Harpeth River that receives Defendant's discharge is identified by the code TN05130204009_3000. It is 16.8 miles long and begins downstream from downtown Franklin, Tennessee. This segment is currently classified for the following uses: Domestic Water Supply, Industrial Water Supply, Fish and Aquatic Life, Recreation, Livestock Watering and Wildlife, and Irrigation. Tenn. Comp. R. & Regs. 0400-40-04-.12 (2014). It appears on Tennessee's list of waterways that do not meet water quality standards under the Clean Water Act. 33 U.S.C. § 1313; 40 C.F.R. § 130.10 ("the § 303(d) list").

20. The Harpeth River is listed as impaired for its classified uses because of "low dissolved oxygen" and "phosphorus," which are impairments caused by a "Municipal Point

Source” and “Discharges from MS4 [Municipal Separate Storm Sewer System] area.” *Final Version Year 2012 303(d) List*, Tenn. Dept. Env’t & Conservation, at 37 (Jan. 2014).

21. Nutrients like nitrogen and phosphorus are pollutants because they “are necessary to support aquatic life, but excess nutrients create conditions leading to eutrophication and hypoxia, in which oxygen concentrations fall below the level necessary to sustain most within and near-bed animal life.” *Definition of “Waters of the United States” Under the Clean Water Act*, 79 Fed. Reg. 22188-01 (proposed Apr. 21, 2014).

22. The Harpeth River has excessive levels of nutrients, which causes problems at the watershed level, but the need to control local nutrient input has regional and national implications because their aggregate impact can be devastating for commercial and recreational fisheries. *See* 79 Fed. Reg. 22,228 (Apr. 21, 2014).

23. Under authority of the Tennessee Water Quality Control Act and the authority delegated to the State of Tennessee from the U.S. Environmental Protection Agency, the Tennessee Department of Environment and Conservation (“TDEC”) has issued and renewed a National Pollutant Discharge Elimination System (“NPDES”) permit to Defendant for its Sewage Treatment Plant. *See* 33 U.S.C. § 1342(b); Tenn. Code Ann. § 69-3-101 *et seq.*

24. Defendant is allowed to operate its Sewage Treatment Plant only pursuant to NPDES permit number TN0027278, which authorizes the discharge wastewater from Outfall 001 into the Harpeth River at approximately river mile 68.8. *State of Tennessee NPDES Permit No. TN0027278* (Issued October 22, 2010) (hereafter “*Cartwright Creek NPDES Permit (2010)*”) (a true and exact copy of this permit is attached as **EXHIBIT 2**).

25. The current version of Defendant’s NPDES permit became effective in 2010, pursuant to the permitting requirements of the Clean Water Act, 33 U.S.C. § 1342, and expired

on November 30, 2011. It has been administratively extended by TDEC pending the issuance of a new permit for which Defendant has applied.

26. More than a decade ago, to fulfil its obligation to administer and enforce the Clean Water Act as it relates to water quality, the State of Tennessee recommended numeric interpretations of the narrative water quality standard for nutrients for each of Tennessee's ecoregions (*i.e.*, areas with similar ecosystems and types, qualities, and quantities of environmental resources). Denton, Arnwine & Wang, *Development of Regionally-Based Interpretations of Tennessee's Narrative Nutrient Criteria*, Tenn. Dept. Env't & Conservation, at 49 (Aug. 2001) (hereafter "*Regionally-Based Interpretations*").

27. Defendant's Sewage Treatment Plant is located in an area designated Level IV Ecoregion 71h. *Harpeth TMDL*, p. 6; Tenn. Comp. R. & Regs. 0400-40-03-.03(5) (defining ecoregion).

28. According to *Regionally-Based Interpretations*, in Tennessee's Ecoregion 71h, the recommended numeric interpretation of the narrative criterion for Total Phosphorus is 0.18 milligrams per liter ("mg/l").

29. Defendant's permit limit for Total Phosphorus, by contrast, provides that it can discharge up to a 3.5, 4.0, or 5.7 mg/l (monthly average concentration) in the summer (May through October), depending on its reuse; there is no limit on how much phosphorus Defendant is permitted to discharge during the winter (November through April).

30. When a waterbody is "impaired," the state or federal agency responsible for enforcing the Clean Water Act must develop a Total Maximum Daily Load ("TMDL") for each pollutant that prevents the waterbody from attaining water quality standards. The TMDL is a plan that helps identify sources of impairment and "quantifies the amount of a pollutant that can

be assimilated in a waterbody.” See 40 C.F.R. § 130.2(h) (2002). See also 40 C.F.R. § 130.2(i) (2014). “Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” 33 U.S.C. § 1313(d)(1)(C) (2014).

31. Harpeth River TMDL for “Organic Enrichment/Low Dissolved Oxygen” was finalized a decade ago, in 2004. It set annual loads for nitrogen and dissolved oxygen. It did not establish a wasteload allocation for phosphorus in the lower Harpeth River.

V. CLAIMS FOR RELIEF: VIOLATIONS OF THE CLEAN WATER ACT, TENNESSEE WATER QUALITY CONTROL ACT, AND ALL IMPLEMENTING REGULATIONS

ALLEGATIONS COMMON TO ALL CLAIMS

32. Paragraphs 1-31 are hereby incorporated by reference as if rewritten in their entirety.

33. As owner and operator of the Cartwright Creek–Grasslands Sewage Treatment Plant, Defendant is responsible for the violations of the Clean Water Act alleged herein.

34. At all times relevant hereto, Defendant was and is responsible for complying with all applicable requirements of the Rules of the Tennessee Department of Environment and Conservation, the Tennessee Water Quality Control Act, and the Clean Water Act concerning the discharge of pollutants into the Harpeth River and its tributaries. 33 U.S.C. § 1317(a); *Cartwright Creek NPDES Permit*, § 3.10 (2010).

35. Prior to filing this lawsuit, the Watershed Association notified Defendant that Defendant’s pollutant discharges and permit non-compliance violate the Clean Water Act and interfere with the Watershed Association’s rights.

36. The purpose of providing defendants with notice of intent to sue is to provide an opportunity to come into compliance without the need for litigation. Defendant has failed to correct all violations cited by the Watershed Association. As a result, Plaintiff and its members continue to suffer irreparable injury as a result of the discharges of Defendant's pollutants into the Harpeth River. The Watershed Association's remedies at law are inadequate to stop the continuing discharges by Defendant.

37. The Harpeth River and its tributaries are waters of the United States or have a significant nexus to waters of the United States and thus are navigable waters as defined by the Clean Water Act and controlling authority. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

38. The objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). To accomplish that objective, Congress set the national goal that "the discharge of pollutants into the navigable waters be eliminated" *Id.*

39. Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any point source to waters of the United States, except for discharges in compliance with a NPDES permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

40. The Clean Water Act gives regulators the authority to require permittees to undertake tasks to further the Act's goal to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," 33 U.S.C. § 1251(a), "including but not limited to . . . developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter" 33 U.S.C. § 1318(a)(A).

41. Because an NPDES permit provides a limited exception to the prohibition on discharging pollutants, a permit holder must strictly comply with the terms of its permit.

42. The issuance of an NPDES permit “does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.” *Cartwright Creek NPDES Permit* § 2.1.6 (2010).

43. Each violation of an NPDES permit—and each “discharge of any pollutant” that is not authorized by a permit—constitute a separate violation of the Clean Water Act. *See, e.g.*, 33 U.S.C. § 1319(d) (“penalty . . . per day for each violation”); 33 U.S.C. §§ 1311(a), 1342(a), 1365(f). *See also* 40 C.F.R. § 122.41(a). *Accord* Tenn. Comp. R. & Regs. 1200-04-05-.07(2)(a)).

44. The “discharge of any pollutant” means “any addition of any pollutant to navigable waters from any point source” 33 U.S.C. § 1362(12). The term “pollutant” includes sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6). The term “point source” includes “any discernible, confined and discrete conveyance” from which pollutants may be discharged, including “any pipe, ditch, channel, tunnel, conduit, well [and] discrete fissure.” *Id.* § 1362(14). The term “effluent limitation” means “any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.” 33 U.S.C. § 1362(11).

45. Nothing precludes a state from adopting or enforcing requirements which are more stringent or more extensive than those required under the Clean Water Act and its implementing regulations. 40 C.F.R. § 123.1(i)(1).

46. Water quality-based effluent limitations are incorporated into NPDES permits if technology-based limitations alone are not sufficient to ensure compliance with applicable water quality standards. 33 U.S.C. §§ 1311(b)(1)(C), 1312(a), 1313(e)(3)(A); 40 C.F.R. § 122.44(d). Each permit must include requirements necessary to achieve water quality standards under the Clean Water Act, including state narrative criteria for water quality. 40 C.F.R. §§ 122.44(d)(1).

47. The purpose of a water quality standard, as defined in the Clean Water Act, is to ensure that, wherever attainable, water quality provides for their use and value for public water supplies, propagation of fish and wildlife, and recreational purposes, among other uses. 33 U.S.C. § 1313(c)(2)(A); 33 U.S.C. § 1251(a)(2).

48. Tennessee water quality standards provide that, “Waters have many uses which in the public interest are reasonable and necessary. Such uses include: sources of water supply for domestic and industrial purposes; propagation and maintenance of fish and other aquatic life; recreation in and on the waters including the safe consumption of fish and shellfish; livestock watering and irrigation; navigation; generation of power; propagation and maintenance of wildlife; and the enjoyment of scenic and aesthetic qualities of waters.” Tenn. Comp. R. & Regs. 0400-40-03.02(2) (2014).

49. Defendant’s NPDES permit provides that, “The wastewater discharge shall not contain pollutants in quantities that will be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream.” *Cartwright Creek NPDES Permit* § 1.1 (2010). It also informs that, “notwithstanding this Permit, it shall be the

responsibility of the permittee to conduct its wastewater treatment and/or discharge activities in a manner such that public or private nuisances or health hazards will not be created.” *Cartwright Creek NPDES Permit* § 2.4.1 (2010).

50. Further, Defendant’s NPDES permit incorporates Tennessee’s “Antidegradation Statement” into Defendant’s obligations for permit compliance. *Cartwright Creek NPDES Permit* § 3.6 (2010). See 40 C.F.R. § 131.12 (2014). See Tenn. Comp. R. & Regs. 0400-40-03-.06 (2014).

51. Defendant’s permit informs: “Any permit noncompliance constitutes a violation of applicable state and federal laws and is grounds for enforcement action, permit termination, permit modification, or denial of permit reissuance.” *Cartwright Creek NPDES Permit* § 2.3.1 (2010).

52. Defendant’s permit requires that, “In the case of any noncompliance which could cause a threat to public drinking supplies, or any other discharge which could constitute a threat to human health or the environment,” the permittee must notify TDEC within 24 hours of becoming aware of the circumstances. *Cartwright Creek NPDES Permit* § 2.3.2(a) (2010).

53. The NPDES permitting program relies primarily on self-reporting by permittees to determine compliance. As such, Defendant is required to record and submit Discharge Monitoring Reports (“DMRs”) and Monthly Operating Reports (“MORs”) to show it is in compliance with the permit. *Cartwright Creek NPDES Permit* §§ 1.3.1, 1.3.4 (2010).

54. Reports must be signed and certified. *Cartwright Creek NPDES Permit* § 1.3.1 (2010). See also 40 C.F.R. § 122.22(d) (requiring certification by authorized agent of permittee that information submitted with DMR is “true, accurate, and complete”); Tenn. Comp. R. & Regs. 1200-04-10-.03(e)(4) (2013); Tenn. Comp. R. & Regs. 0400-40-05-.07(f) (2014).

55. Defendant must report any permit non-compliance on its DMRs. *Cartwright Creek NPDES Permit* § 2.3.2 (2010).

56. Based on Defendant's own public reports to TDEC, Defendant has a long-standing and continuing history of unauthorized discharges from the Sewage Treatment Plant and its sewer system into the Harpeth River and other waters of the United States, such as discharges of excess pollutants, wet and dry weather overflows, and bypasses.

57. Based on Defendant's own public reports to TDEC, Defendant has a long-standing and continuing history of non-compliance with its NPDES permit, including failure to develop or implement a nutrient management plan and failure to operate its plant in accordance with its permit.

58. Each of Defendant's unauthorized discharges of pollutants is a violation of the terms of its discharge permit, and thus a violation of the Clean Water Act.

59. Each of Defendant's failures to comply with the terms of its discharge permit is a violation of the Clean Water Act.

60. The Clean Water Act allows enforcement of a state's permit water quality provisions. *See* 33 U.S.C. §§ 1365(a)(1), 1365(f), 1342(b).

61. Section 505 of the Clean Water Act authorizes any citizen to commence a civil action "against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation" 33 U.S.C. § 1365(a)(1).

62. Such enforcement action under Clean Water Act § 505, 33 U.S.C. § 1365, includes an action seeking remedies for violation of "a permit or condition thereof issued under section 1342 of this title," that is, under section 402 of the Clean Water Act. 33 U.S.C. § 1365(f).

63. Section 505(a) of the Clean Water Act authorizes an action for injunctive relief.
33 U.S.C. § 1365(a).

64. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$37,500 per day per violation for all violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505(a) of the Clean Water Act. 33 U.S.C. § 1319(d) (Availability of Civil Monetary Penalties); 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

65. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing or substantially prevailing parties to recover litigation costs, including attorney fees and expert witness fees.

66. Based on Defendant's past history of noncompliance with its NPDES Permit, and continuing violation thereof from the time of the 60-day notice to the present, it is reasonably likely that Defendant's illegal discharges will continue to occur in the absence of a remedy provided by this Court.

67. Continuing commission of the acts and omissions alleged herein irreparably harms the waters, as well as Harpeth River Watershed Association and its members, for which harm they have no adequate remedy at law

68. These types of continued violations may have a significant impact on water quality, aquatic life, and human health.

COUNT 1: NUMERIC VIOLATIONS AND OVERFLOWS

69. Paragraphs 1-68 are hereby incorporated by reference as if rewritten in their entirety.

70. Section 1.1's of Defendant's permit contains effluent limitations which limits the discharge of certain enumerated pollutants into the Harpeth River.

71. In addition, "[A]ny release of sewage from any portion of the collection, transmission, or treatment system other than through permitted outfalls" is called an "overflow." Overflows are prohibited. *Cartwright Creek NPDES Permit*, § 2.3.3(a), (b) (2010).

72. Microbial pathogens, toxics, and other pollutants present in overflows can cause or contribute to water quality impairment, contamination of drinking water supplies, and other environmental and human health problems.

73. Defendant's permit requires it to submit monthly reports to TDEC with a "summary report of known or suspected instances of overflows in the collection system or bypass of wastewater treatment facilities." *Cartwright Creek NPDES Permit* § 1.3.5.1 (2010).

74. "The [overflow] report must contain the date and duration of the instances of overflow and/or bypassing and the estimated quantity of wastewater released and/or bypassed." *Cartwright Creek NPDES Permit* § 1.3.5.1 (2010).

75. Defendant's own records submitted under oath to TDEC show that Defendant violated its NPDES permit's prohibition on overflows and reporting requirements for overflows, as reflected in the following chart:

Date of Violation(s)	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)	Additional Detail from DMR, MOR or Noncompliance Report
July 22, 2009	Daily Total Suspended Solids % removal min.	40%	(15.8%)	DMR states 98.1%
September 1 - September 30, 2009	Monthly Carbonaceous Biochemical Oxygen Demand lb/day avg.	10	12	MOR states 11.6
September 1 - September 30, 2009	Monthly Total Suspended Solids % removal avg.	85%	(84.3%)	DMR states 86.5%

Date of Violation(s)	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)	Additional Detail from DMR, MOR or Noncompliance Report
September 27 - October 3, 2009	Weekly Carbonaceous Biochemical Oxygen Demand lb/day avg.	16	16.1	MOR indicates 17.1 lb/day average
September 27 - October 3, 2009	Weekly Total Suspended Solids lb/day avg.	83	(87.96)	DMR states 74.8
November 24, 2009	Daily Dissolved Oxygen mg/L min.	6	5.5	
February 1-5, 8-12, 15-19, 22-26, 2010	Daily Chlorine mg/L max.	0.25	0.60	MOR indicates 20 days in violation, not 15 as on DMR
March 1 - March 31, 2010	Monthly Total Suspended Solids % removal avg.	85%	75.5%	
November 1 - November 30, 2010	Monthly Total Suspended Solids % removal avg.	85%	80.4%	
December [?], 2010	Bypass	0	1	Listed on DMR but not on MOR, no noncompliance report, date and location unknown
December 1 - December 31, 2010	Monthly Total Suspended Solids % removal avg.	85%	75.3%	
May 1 - May 31, 2011	Monthly Total Suspended Solids % removal avg.	85%	82.1%	
July 7, 2011	Daily Chlorine mg/L max.	0.24	0.41	
July 1 - July 31, 2011	Monthly Total Suspended Solids % rem. avg.	85%	83.9%	
December 1 - December 31, 2011	Monthly Total Suspended Solids % removal avg.	85%	77.1%	
January 4, 2012	Daily Chlorine mg/L max.	0.24	0.30	
January 1 - January 31, 2012	Monthly Total Suspended Solids % removal avg.	85%	82.6%	
February 1 - February 29, 2012	Monthly Total Suspended Solids % removal avg.	85%	81.6%	
April 27, 2012	Daily Chlorine mg/L max.	0.24	9.00	

Date of Violation(s)	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)	Additional Detail from DMR, MOR or Noncompliance Report
May 1, 2012	Daily Chlorine mg/L max.	0.24	0.60	
May 6 - May 12, 2012	Weekly Carbonaceous Biochemical Oxygen Demand lb/day avg.	15	18.05	
May 13 - May 19, 2012	Weekly Carbonaceous Biochemical Oxygen Demand lb/day avg.	15	(15.2)	2nd weekly violation of month not noted on DMR
May 1 - May 31, 2012	Monthly Carbonaceous Biochemical Oxygen Demand lb/day avg.	10	13.4	
May 1 - May 31, 2012	Monthly Total Nitrogen mg/L avg.	1.9	3.1	
May 27 - June 2, 2012	Weekly Carbonaceous Biochemical Oxygen Demand lb/day avg.	15	16.55	
June 3 - June 9, 2012	Weekly Carbonaceous Biochemical Oxygen Demand lb/day avg.	15	(16.3)	2nd weekly violation of month not noted on DMR
June 1 - June 30, 2012	Monthly Total Nitrogen mg/L avg.	1.9	(1.92)	DMR states 1.9
July 1 - July 31, 2012	Monthly Total Nitrogen mg/L avg.	1.9	(1.92)	DMR states 1.9
Aug. 1 - Aug. 31, 2012	Monthly Total Nitrogen mg/L avg.	1.9	4.5	
September 1 - September 30, 2012	Monthly Total Nitrogen mg/L avg.	1.9	4.6	MOR states 4.51
October 1 - October 31, 2012	Monthly Total Nitrogen mg/L avg.	1.9	5.6	MOR states 4.58
December 23 - December 29, 2012	Weekly Total Suspended Solids lb/day avg.	83	97.2	
December 1 - December 31, 2012	Monthly Total Suspended Solids % removal avg.	85%	84.7%	
January 7, 2013	Daily Total Suspended Solids % removal min.	40%	15%	
January 15, 2013	Daily Total Suspended Solids % removal min.	40%	(10%)	MOR indicates 10% daily removal not shown by DMR
January 1 -	Monthly Total Suspended	85%	83.7%	MOR states 83.5%

Date of Violation(s)	Permit Parameter Violated	Permit Limit	Reported on DMR (or MOR)	Additional Detail from DMR, MOR or Noncompliance Report
January 31, 2013	Solids % removal avg.			
February 1 - February 28, 2013	Monthly Total Suspended Solids % removal avg.	85%	84.0%	MOR states 82.6%
March [?], 2013	Dry Weather Overflow	0	1	Listed on DMR but not on MOR, no noncompliance report, date and location unknown
March 1 - March 31, 2013	Monthly Total Suspended Solids % removal avg.	85%	83%	
April 1, 2013	Dry Weather Overflow	0	0	Not indicated in DMR or MOR, but in noncompliance report; 1035 Boxwood Drive
May 14, 2013	Daily Total Suspended Solids % removal min.	40%	33.3%	
May 14, 2013	Dry Weather Bypass	0	1	DMR lists excursion & footnotes algae in effluent on 5/14; no MOR or other indication of bypass
September 19, 2013	Daily Dissolved Oxygen mg/L min.	6	5.9	

76. Each day of the period (daily, weekly, or monthly) of violations constitutes a separate violation of the permit and of the Clean Water Act.

77. Defendant's efforts have been inadequate to prevent recurrent illegal discharges. These discharges are therefore likely to continue. Plaintiff and its members have suffered damage and continue to suffer damage as a result of Defendant's actions described in this count. These actual and potential injuries have been, are being, and will continue to be caused by the illegal discharges from the sewage collection system into waters of the United States. The relief

sought herein will redress the harms to the Harpeth River Watershed Association and its members caused by Defendant's discharges. Their injuries will not be redressed except by an order from this Court requiring Defendant to take immediate and substantial action to stop the illegal discharges of pollutants into the Harpeth River and to comply with such other relief as this Court deems necessary.

COUNT 2: MONITORING VIOLATIONS

78. Paragraphs 1-77 are hereby incorporated by reference as if rewritten in their entirety.

79. Defendant's own records submitted under oath to TDEC show that Defendant violated its NPDES permit's requirement that all discharges "shall be . . . monitored . . . as specified" in § 1.1, as reflected in the following chart. The first two columns of the chart show the date of the violations and the number of days *Cartwright Creek* was in violation. The next columns show the "***Parameter Violated***" (i.e., the monitoring provision violated during the relevant monitoring period); the "***Monitoring Required by the Permit***" (i.e., the minimum number of measurements per monitoring period); and the "***Monitoring Actually Reported***" (i.e., the actual number of measurements performed by the permittee during the monitoring period, as listed in the permittee's MOR and used in the permittee's DMR to satisfy the permit's reporting requirements).¹

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
May 31 - June 6, 2009	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	0/week
May 31 - June 6, 2009	Influent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	0/week

¹ The last DMRs and MORs available were October 2013.

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
May 31 - June 6, 2009	Effluent Total Suspended Solids monitoring	3/week	0/week
May 31 - June 6, 2009	Influent Total Suspended Solids monitoring	3/week	0/week
June 28 - July 4, 2009	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	0/week
June 28 - July 4, 2009	Influent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	0/week
June 28 - July 4, 2009	Effluent Total Suspended Solids monitoring	3/week	0/week
June 28 - July 4, 2009	Influent Total Suspended Solids monitoring	3/week	0/week
August 2 - August 8, 2009	Effluent Chlorine monitoring	5/week	0/week
August 9 - August 15, 2009	Effluent Chlorine monitoring	5/week	0/week
August 16 - August 22, 2009	Effluent Chlorine monitoring	5/week	0/week
August 23 - August 29, 2009	Effluent Chlorine monitoring	5/week	0/week
August 30 - September 5, 2009	Effluent Chlorine monitoring	5/week	4/week
August 30 - September 5, 2009	Effluent Dissolved Oxygen monitoring	5/week	4/week
November 22 - November 28, 2009	Effluent Chlorine monitoring	5/week	4/week
March 28 - April 3, 2010	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	2/week
March 28 - April 3, 2010	Influent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	2/week
April 25 - May 1, 2010	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	0/week
April 25 - May 1, 2010	Influent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	0/week
May 2 - May 8, 2010	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	0/week
May 2 - May 8, 2010	Influent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	0/week
May 2 - May 8, 2010	Effluent Ammonia as Nitrogen monitoring	3/week	0/week
May 2 - May 8, 2010	Influent Total Suspended Solids monitoring	3/week	0/week
May 2 - May 8, 2010	Effluent Total Suspended Solids	3/week	0/week

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
	monitoring		
May 2 - May 8, 2010	Effluent Settleable Solids monitoring	5/week	2/week
May 2 - May 8, 2010	Effluent Dissolved Oxygen monitoring	5/week	1/week
May 2 - May 8, 2010	Effluent pH monitoring	5/week	1/week
May 2 - May 8, 2010	Effluent <i>E. coli</i> monitoring	3/week	0/week
May 2 - May 8, 2010	Effluent Chlorine monitoring	5/week	0/week
May 9 - May 15, 2010	Effluent Chlorine monitoring	5/week	0/week
May 16 - May 22, 2010	Effluent Chlorine monitoring	5/week	0/week
May 23 - May 29, 2010	Effluent Chlorine monitoring	5/week	0/week
May 30 - June 5, 2010	Effluent Chlorine monitoring	5/week	4/week
August 1 - August 7, 2010	Effluent Chlorine monitoring	5/week	4/week
August 8 - August 14, 2010	Effluent <i>E. coli</i> monitoring	3/week	1/week
September 5 - September 11, 2010	Effluent pH monitoring	5/week	4/week
January 9 - January 15, 2011	Effluent Settleable Solids monitoring	5/week	4/week
January 16 - January 22, 2011	Effluent Settleable Solids monitoring	5/week	4/week
February 13 - February 19, 2011	Effluent Settleable Solids monitoring	5/week	4/week
January 1 - March 31, 2011	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
January 1 - March 31, 2011	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
April 3 - April 9, 2011	Effluent <i>E. coli</i> monitoring	5/week	2/week
April 10 - April 16, 2011	Effluent <i>E. coli</i> monitoring	5/week	2/week
April 17 - April 23, 2011	Effluent <i>E. coli</i> monitoring	5/week	2/week
April 24 - April 30, 2011	Effluent <i>E. coli</i> monitoring	5/week	4/week
May 1 - May 31, 2011	Total Nitrogen monitoring	2/month	1/month
May 1 - May 31, 2011	Total Phosphorus monitoring	2/month	1/month
May 1 - May 31, 2011	Insoluble Total Kjeldahl Nitrogen monitoring ²	2/month	0/month
May 1 - May 31, 2011	Insoluble Phosphorus monitoring	2/month	0/month
June 1 - June 30, 2011	Total Phosphorus monitoring	2/month	1/month
April 1 - June 30, 2011	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
April 1 - June 30, 2011	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
June 26 - July 2, 2011	Effluent Chlorine monitoring	5/week	4/week

² For each of the “Insoluble Total Kjeldahl Nitrogen monitoring” and “Insoluble Phosphorus monitoring” entries in this chart, the HRWA characterizes the “monitoring actually reported” as “0/month.” These parameters require twice monthly monitoring and reporting. Although Cartwright Creek reported “0.0” twice per month for these parameters on its MORs, Total Nitrogen and Total Phosphorus were not monitored on the same days.

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
June 26 - July 2, 2011	Effluent Settleable Solids monitoring	5/week	4/week
July 24 - July 30, 2011	Effluent Settleable Solids monitoring	5/week	4/week
August 7 - August 13, 2011	Effluent Dissolved Oxygen monitoring	5/week	4/week
August 7 - August 13, 2011	Effluent pH monitoring	5/week	4/week
August 7 - August 13, 2011	Effluent Chlorine monitoring	5/week	4/week
August 1 - August 31, 2011	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
August 1 - August 31, 2011	Insoluble Phosphorus monitoring	2/month	0/month
August 28 - September 3, 2011	Influent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	2/week
August 28 - September 3, 2011	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	2/week
August 28 - September 3, 2011	Effluent Settleable Solids monitoring	5/week	4/week
September 11 - September 17, 2011	Influent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	2/week
September 11 - September 17, 2011	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	2/week
September 11 - September 17, 2011	Effluent Dissolved Oxygen monitoring	5/week	4/week
September 11 - September 17, 2011	Effluent Chlorine monitoring	5/week	4/week
September 18 - September 24, 2011	Effluent Ammonia as Nitrogen monitoring	3/week	2/week
September 1 - September 30, 2011	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
September 1 - September 30, 2011	Insoluble Phosphorus monitoring	2/month	0/month
July 1 - September 30, 2011	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September	Quarterly Total Nitrogen % removal	1/quarter	0/quarter

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
30, 2011	monitoring		
July 1 - September 30, 2011	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
July 1 - September 30, 2011	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
September 25 - October 1, 2011	Influent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	2/week
September 25 - October 1, 2011	Effluent Carbonaceous Biochemical Oxygen Demand monitoring	3/week	2/week
September 25 - October 1, 2011	Influent Total Suspended Solids monitoring	3/week	2/week
September 25 - October 1, 2011	Effluent Total Suspended Solids monitoring	3/week	2/week
October 16 - October 22, 2011	Effluent Dissolved Oxygen monitoring	5/week	4/week
October 16 - October 22, 2011	Effluent pH monitoring	5/week	4/week
October 16 - October 22, 2011	Effluent Chlorine monitoring	5/week	3/week
October 23 - October 29, 2011	Effluent Settleable Solids monitoring	5/week	4/week
October 23 - October 29, 2011	Effluent Dissolved Oxygen monitoring	5/week	4/week
October 23 - October 29, 2011	Effluent pH monitoring	5/week	4/week
October 1 - October 31, 2011	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
October 1 - October 31, 2011	Insoluble Phosphorus monitoring	2/month	0/month
October 30 - November 5, 2011	Effluent Ammonia as Nitrogen monitoring	3/week	2/week
October 30 - November 5, 2011	Effluent Dissolved Oxygen monitoring	5/week	4/week
October 30 - November 5, 2011	Effluent pH monitoring	5/week	4/week
October 30 - November 5, 2011	Effluent Chlorine monitoring	5/week	4/week
October 30 - November 5, 2011	Effluent <i>E. coli</i> monitoring	5/week	4/week
November 20 - November 26, 2011	Influent Total Suspended Solids monitoring	3/week	2/week

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
November 20 - November 26, 2011	Effluent Total Suspended Solids monitoring	3/week	2/week
November 1 - November 30, 2011	Total Nitrogen monitoring	2/month	1/month
November 1 - November 30, 2011	Total Phosphorus monitoring	2/month	1/month
December 1 - December 31, 2011	Total Nitrogen monitoring	2/month	0/month
December 1 - December 31, 2011	Total Phosphorus monitoring	2/month	0/month
October 1 - December 31, 2011	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
October 1 - December 31, 2011	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
January 29 - February 4, 2012	Influent Total Suspended Solids monitoring	3/week	2/week
January 29 - February 4, 2012	Effluent Total Suspended Solids monitoring	3/week	2/week
January 29 - February 4, 2012	Effluent <i>E. coli</i> monitoring	5/week	3/week
February 19 - February 25, 2012	Influent Total Suspended Solids monitoring	3/week	2/week
February 19 - February 25, 2012	Effluent Total Suspended Solids monitoring	3/week	2/week
February 19 - February 25, 2012	Effluent Dissolved Oxygen monitoring	5/week	4/week
March 18 - March 24, 2012	Influent Total Suspended Solids monitoring	3/week	2/week
March 18 - March 24, 2012	Effluent Total Suspended Solids monitoring	3/week	2/week
March 25 - March	Effluent Chlorine monitoring	5/week	1/week

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
31, 2012			
March 1 - March 31, 2012	Total Nitrogen monitoring	2/month	0/month
March 1 - March 31, 2012	Total Phosphorus monitoring	2/month	0/month
January 1 - March 31, 2012	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
January 1 - March 31, 2012	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
April 8 - April 14, 2012	Influent Total Suspended Solids monitoring	3/week	2/week
April 8 - April 14, 2012	Effluent Total Suspended Solids monitoring	3/week	2/week
April 8 - April 14, 2012	Effluent Dissolved Oxygen monitoring	5/week	4/week
May 1 - May 31, 2012	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
May 1 - May 31, 2012	Insoluble Phosphorus monitoring	2/month	0/month
June 17 - June 23, 2012	Influent Total Suspended Solids monitoring	3/week	2/week
June 17 - June 23, 2012	Effluent Total Suspended Solids monitoring	3/week	2/week
June 1 - June 30, 2012	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
June 1 - June 30, 2012	Insoluble Phosphorus monitoring	2/month	0/month
April 1 - June 30, 2012	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
April 1 - June 30, 2012	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
April 1 - June 30, 2012	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
July 1 - July 7, 2012	Effluent <i>E. coli</i> monitoring	5/week	4/week
July 1 - July 31, 2012	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
July 1 - July 31, 2012	Insoluble Phosphorus monitoring	2/month	0/month
August 19 - August 25, 2012	Effluent <i>E. coli</i> monitoring	5/week	4/week
August 1 - August 31, 2012	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
August 1 - August 31, 2012	Insoluble Phosphorus monitoring	2/month	0/month
August 26 - September 1, 2012	Effluent Chlorine monitoring	5/week	4/week
September 2 - September 8, 2012	Effluent Total Suspended Solids monitoring	3/week	2/week
September 16 - September 22, 2012	Influent Total Suspended Solids monitoring	3/week	2/week
September 1 - September 30, 2012	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
September 1 - September 30, 2012	Insoluble Phosphorus monitoring	2/month	0/month
July 1 - September 30, 2012	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
July 1 - September 30, 2012	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
July 1 - September 30, 2012	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
September 30 - October 6, 2012	Effluent <i>E. coli</i> monitoring	5/week	3/week
October 1 - October 31, 2012	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
October 1 - October 31, 2012	Insoluble Phosphorus monitoring	2/month	0/month
October 28 - November 3, 2012	Influent Total Suspended Solids monitoring	3/week	2/week
October 28 - November 3, 2012	Effluent Total Suspended Solids monitoring	3/week	2/week
December 23 - December 29, 2012	Effluent Settleable Solids monitoring	5/week	4/week
December 23 - December 29, 2012	Effluent Dissolved Oxygen monitoring	5/week	4/week
December 23 - December 29, 2012	Effluent pH monitoring	5/week	4/week
December 23 - December 29, 2012	Effluent Chlorine monitoring	5/week	4/week
December 23 - December 29, 2012	Effluent <i>E. coli</i> monitoring	5/week	4/week
October 1 - December 31, 2012	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
October 1 - December 31, 2012	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
January 1 - January	Total Phosphorus phosphorus monitoring	2/month	1/month

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
31, 2013			
January 27 - February 2, 2013	Effluent Settleable Solids monitoring	5/week	4/week
February 17 - February 23, 2013	Effluent Settleable Solids monitoring	5/week	4/week
February 17 - February 23, 2013	Effluent Chlorine monitoring	5/week	4/week
February 1 - February 28, 2013	Total Nitrogen monitoring	2/month	0/month
February 1 - February 28, 2013	Total Phosphorus monitoring	2/month	0/month
March 3 - March 9, 2013	Effluent <i>E. coli</i> monitoring	5/week	4/week
March 10 - March 16, 2013	Effluent Settleable Solids monitoring	5/week	4/week
March 1 - March 31, 2013	Total Nitrogen monitoring	2/month	0/month
March 1 - March 31, 2013	Total Phosphorus monitoring	2/month	0/month
January 1 - March 31, 2013	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
January 1 - March 31, 2013	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
April 1 – April 30, 2013	Total Nitrogen monitoring	2/month	0/month ³
April 1 – April 30, 2013	Total Phosphorus monitoring	2/month	0/month ⁴

³ Unavailable/missing pages.

⁴ Unavailable/missing pages.

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
May 12 - May 18, 2013	Effluent <i>E. coli</i> monitoring	5/week	3/week
May 19 - May 25, 2013	Effluent <i>E. coli</i> monitoring	5/week	4/week
May 1 - May 31, 2013	Total Nitrogen monitoring	2/month	0/month
May 1 - May 31, 2013	Total Phosphorus monitoring	2/month	0/month
May 1 - May 31, 2013	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
May 1 - May 31, 2013	Insoluble Phosphorus monitoring	2/month	0/month
June 1 - June 30, 2013	Total Nitrogen monitoring	2/month	0/month
June 1 - June 30, 2013	Total Phosphorus monitoring	2/month	0/month
June 1 - June 30, 2013	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
June 1 - June 30, 2013	Insoluble Phosphorus monitoring	2/month	0/month
April 1 - June 30, 2013	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
April 1 - June 30, 2013	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
July 1 - July 31, 2013	Total Nitrogen monitoring	2/month	0/month
July 1 - July 31, 2013	Total Phosphorus monitoring	2/month	0/month
July 1 - July 31, 2013	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
July 1 - July 31, 2013	Insoluble Phosphorus monitoring	2/month	0/month

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
2013			
August 1 - August 31, 2013	Total Nitrogen monitoring	2/month	0/month
August 1 - August 31, 2013	Total Phosphorus monitoring	2/month	0/month
August 1 - August 31, 2013	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
August 1 - August 31, 2013	Insoluble Phosphorus monitoring	2/month	0/month
September 1 - September 30, 2013	Total Nitrogen monitoring	2/month	0/month ⁵
September 1 - September 30, 2013	Total Phosphorus monitoring	2/month	0/month ⁶
September 1 - September 30, 2013	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month ⁷
September 1 - September 30, 2013	Insoluble Phosphorus monitoring	2/month	0/month ⁸
July 1 - September 30, 2013	Quarterly Influent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	Quarterly Effluent Total Nitrogen mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	Quarterly Influent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	Quarterly Effluent Total Phosphorus mg/L monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	Quarterly Total Nitrogen % removal monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	Quarterly Total Phosphorus % removal monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	Quarterly Effluent Total Nitrogen lb/day monitoring	1/quarter	0/quarter
July 1 - September 30, 2013	Quarterly Effluent Total Phosphorus lb/day monitoring	1/quarter	0/quarter
October 1 - October 31, 2013	Total Nitrogen monitoring	2/month	0/month
October 1 - October 31, 2013	Total Phosphorus monitoring	2/month	0/month

⁵ Unavailable/missing pages.

⁶ Unavailable/missing pages.

⁷ Unavailable/missing pages.

⁸ Unavailable/missing pages.

Date of Violations	Parameter Violated	Monitoring Required by Permit	Monitoring Actually Reported
October 1 - October 31, 2013	Insoluble Total Kjeldahl Nitrogen monitoring	2/month	0/month
October 1 - October 31, 2013	Insoluble Phosphorus monitoring	2/month	0/month

80. Each day of the period (daily, weekly, or monthly) of violations constitutes a separate violation of the permit and of the Clean Water Act.

81. The recurrent nature of these violations indicates that these violations are likely to continue. Plaintiff and its members have suffered damage and continue to suffer damage as a result of Defendant's actions described in this count. These actual and potential injuries have been, are being, and will continue to be caused by the illegal discharges from the sewage treatment plant and failure to accurately measure these discharges into waters of the United States. The relief sought herein will redress the harms to the Harpeth River Watershed Association and its members caused by Defendant's discharges. Their injuries will not be redressed except by an order from this Court requiring Defendant to take immediate and substantial action to accurately monitor the discharges of pollutants into the Harpeth River and to comply with such other relief as this Court deems necessary.

COUNT 3: REPORTING AND DUTY TO REPORT NON-COMPLIANCE VIOLATIONS

82. Paragraphs 1-81 are hereby incorporated by reference as if rewritten in their entirety.

83. Defendant's own records submitted under oath to TDEC show that Defendant violated its NPDES permit's requirement to accurately report its operations and report any non-compliance. The column of the following chart labeled "*Month of Reporting Violation*" indicates the monthly reporting period during which the violation occurred; the "*Number of*

Violations” column identifies how many violations stem from the reporting failure; the **“Permit Requirement Violated”** column identifies whether the violation involves the duty to report noncompliance or the failure to properly report the monitoring of a particular effluent parameter; and the **“Explanation of Reporting Violation”** column provides additional information on the alleged violation from the MORs and DMRs submitted by Cartwright Creek. Failure to report is accounted for from December 2010 to the October 2013, due to the three year record retention requirement of Permit § 1.2.5.

Dates of Violation	Permit Requirement Violated	Additional Detail of Violation
December 2010	Overflow/Bypass Report	Bypass date unknown
December 2010	Duty to Report Noncompliance	Monthly Total Suspended Solids % removal average; bypass
January 2011	Duty to Report Noncompliance	Settleable solids monitoring (2 weeks)
February 2011	Duty to Report Noncompliance	Settleable solids monitoring (1 week)
March 2011	Duty to Report Noncompliance	Quarterly nutrient monitoring (8 violations)
April 2011	Duty to Report Noncompliance	<i>E. coli</i> monitoring (4 weeks)
May 2011	Duty to Report Noncompliance	Total Nitrogen & Total Phosphorus monitoring; Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Monthly Total Suspended Solids % removal average
June 2011	Duty to Report Noncompliance	Total Phosphorus monitoring; quarterly nutrient monitoring (8 violations)
July 2011	Duty to Report Noncompliance	Chlorine monitoring (1 week); settleable solids monitoring (2 weeks); chlorine daily mg/L maximum; Monthly Total Suspended Solids % removal average
August 1 – August 31, 2011	Nutrient Management Plan submission requirement	

Dates of Violation	Permit Requirement Violated	Additional Detail of Violation
August 2011	Duty to Report Noncompliance	Dissolved Oxygen monitoring (1 week); pH monitoring (1 week); chlorine monitoring (1 week); Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Nutrient Management Plan submission requirement
September 1 – September 30, 2011	Nutrient Management Plan submission requirement	
September 2011	Duty to Report Noncompliance	Influent & Effluent CBOD monitoring (2 weeks each); settleable solids monitoring (1 week); Dissolved Oxygen monitoring (1 week); chlorine monitoring (1 week); Ammonia as Nitrogen monitoring (1 week); Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; quarterly nutrient monitoring (8 violations); Nutrient Management Plan submission requirement
October 1 – October 31, 2011	Nutrient Management Plan submission requirement	
October 2011	Duty to Report Noncompliance	Influent & Effluent CBOD monitoring (1 week each); Influent & Effluent Total Suspended Solids monitoring (1 week each); Dissolved Oxygen monitoring (2 weeks); pH monitoring (2 weeks); chlorine monitoring (1 week); settleable solids monitoring (1 week); Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Nutrient Management Plan submission requirement
November 1 – November 30, 2011	Nutrient Management Plan submission requirement	
November 2011	Duty to Report Noncompliance	Ammonia as Nitrogen monitoring (1 week); Dissolved Oxygen monitoring (1 week); pH monitoring (1 week); chlorine monitoring (1 week); <i>E. coli</i> monitoring (1 week); Influent & Effluent Total Suspended Solids monitoring (1 week each); Total Nitrogen & Total Phosphorus monitoring; Nutrient Management Plan submission requirement

Dates of Violation	Permit Requirement Violated	Additional Detail of Violation
December 1 – December 31, 2011	Nutrient Management Plan submission requirement	
December 2011	Duty to Report Noncompliance	Monthly Total Suspended Solids % removal average; Total Nitrogen & Total Phosphorus monitoring; quarterly nutrient monitoring (8 violations); annual Total Nitrogen; Nutrient Management Plan submission requirement
January 1 – January 31, 2012	Nutrient Management Plan submission requirement	
January 2012,	Duty to Report Noncompliance	Chlorine daily mg/L maximum; Nutrient Management Plan submission requirement
February 1 – February 29, 2012	Nutrient Management Plan submission requirement	
February 16 – February 29, 2012	Nutrient Management Plan annual update (2012)	
February 2012	Duty to Report Noncompliance	Influent & Effluent Total Suspended Solids monitoring (2 weeks each); <i>E. coli</i> monitoring (1 week); Dissolved Oxygen monitoring (1 week); Monthly Total Suspended Solids % removal average; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
March 1 – March 31, 2012	Nutrient Management Plan submission requirement	
March 1 – March 31, 2012	Nutrient Management Plan annual update (2012)	
March 2012	Duty to Report Noncompliance	Influent & Effluent Total Suspended Solids monitoring (1 week each); chlorine monitoring (1 week); Total Nitrogen & Total Phosphorus monitoring; quarterly nutrient monitoring (8 violations); Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
April 1 – April 30, 2012	Nutrient Management Plan submission requirement	

Dates of Violation	Permit Requirement Violated	Additional Detail of Violation
April 1 – April 30, 2012	Nutrient Management Plan annual update (2012)	
April 2012	Duty to Report Noncompliance	Influent & Effluent Total Suspended Solids monitoring (1 week each); Dissolved Oxygen monitoring (1 week); chlorine daily mg/L maximum; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
May 1 – May 31 2012	Nutrient Management Plan submission requirement	
May 1 – May 31, 2012	Nutrient Management Plan annual update (2012)	
May 2012	Duty to Report Noncompliance	Chlorine daily mg/L maximum; weekly Carbonaceous Biochemical Oxygen Demand lb/day average (2 weeks); monthly CBOD lb/day average; Monthly Total Nitrogen mg/L average; Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
June 1 – June 30, 2012	Nutrient Management Plan submission requirement	
June 1 – June 30, 2012	Nutrient Management Plan annual update (2012)	
June 2012	Duty to Report Noncompliance	Weekly Carbonaceous Biochemical Oxygen Demand lb/day average (2 weeks); Monthly Total Nitrogen mg/L average; Influent & Effluent Total Suspended Solids monitoring (1 week each); Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; quarterly nutrient monitoring (8 violations); Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
July 1 – July 31, 2012	Nutrient Management Plan submission requirement	
July 1 – July 31, 2012	Nutrient Management Plan annual update (2012)	

Dates of Violation	Permit Requirement Violated	Additional Detail of Violation
July 2012	Duty to Report Noncompliance	Monthly Total Nitrogen mg/L average; <i>E. coli</i> monitoring (1 week); Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
August 1 – August 31, 2012	Nutrient Management Plan submission requirement	
August 1 – August 31, 2012	Nutrient Management Plan annual update (2012)	
August 2012	Duty to Report Noncompliance	Monthly Total Nitrogen mg/L average; <i>E. coli</i> monitoring (1 week); Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
September 1 – September 30, 2012	Nutrient Management Plan submission requirement	
September 1 – September 30 2012	Nutrient Management Plan annual update (2012)	
September 2012	Duty to Report Noncompliance	Monthly Total Nitrogen mg/L average; Influent & Effluent Total Suspended Solids monitoring (1 week each); chlorine monitoring (1 week); Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; quarterly nutrient monitoring (8 violations); Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
October 1 – October 31, 2012	Nutrient Management Plan submission requirement	
October 1 – October 31, 2012	Nutrient Management Plan annual update (2012)	

Dates of Violation	Permit Requirement Violated	Additional Detail of Violation
October 2012	Duty to Report Noncompliance	Monthly Total Nitrogen mg/L average; <i>E. coli</i> monitoring (1 week); Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
November 1 – November 30, 2012	Nutrient Management Plan submission requirement	
November 1 – November 30, 2012	Nutrient Management Plan annual update (2012)	
November 2012	Duty to Report Noncompliance	Influent & Effluent Total Suspended Solids monitoring (1 week each); Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
December 1 – December 31, 2012	Nutrient Management Plan submission requirement	
December 1 – December 31, 2012	Nutrient Management Plan annual update (2012)	
December 2012	Duty to Report Noncompliance	Weekly Total Suspended Solids lb/day average (1 week); Monthly Total Suspended Solids % removal average; settleable solids monitoring (1 week); Dissolved Oxygen monitoring (1 week); pH monitoring (1 week); chlorine monitoring (1 week); <i>E. coli</i> monitoring (1 week); quarterly nutrient monitoring (8 violations); annual Total Nitrogen; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
January 1 – January 31, 2013	Nutrient Management Plan submission requirement	
January 1 – January 31, 2013	Nutrient Management Plan annual update (2012)	

Dates of Violation	Permit Requirement Violated	Additional Detail of Violation
January 2013	Duty to Report Noncompliance	Daily Total Suspended Solids % removal minimum (2 days); Monthly Total Suspended Solids % removal average; Total P monitoring; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012)
February 1 – February 28, 2013	Nutrient Management Plan submission requirement	
February 1 – February 28, 2013	Nutrient Management Plan annual update (2012)	
February 16 – February 28, 2013	Nutrient Management Plan annual update (2013)	
February 2013	Duty to Report Noncompliance	Monthly Total Suspended Solids % removal average; settleable solids monitoring (2 weeks); chlorine monitoring (1 week); Total Nitrogen & Total Phosphorus monitoring; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012 & 2013)
March 1 – March 31, 2013	Nutrient Management Plan submission requirement	
March 1 – March 31, 2013	Nutrient Management Plan annual update (2012)	
March 1 – March 31, 2013	Nutrient Management Plan annual update (2013)	
March 2013	Overflow/Bypass Report	Dry weather overflow date unknown
March 2013	Duty to Report Noncompliance	Monthly Total Suspended Solids % removal average; <i>E. coli</i> monitoring (1 week); settleable solids monitoring (1 week); Total Nitrogen & Total Phosphorus monitoring; quarterly nutrient monitoring (8 violations); Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012 & 2013)

Dates of Violation	Permit Requirement Violated	Additional Detail of Violation
April 1 – April 30, 2013	Nutrient Management Plan submission requirement	
April 1 – April 30, 2013	Nutrient Management Plan annual update (2012)	
April 1 – April 30, 2013	Nutrient Management Plan annual update (2013)	
April 2013	Duty to Report Noncompliance	Total Nitrogen & Total Phosphorus monitoring; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012 & 2013)
May 1- May 31 2013	Nutrient Management Plan submission requirement	
May 1- May 31, 2013	Nutrient Management Plan annual update (2012)	
May 1- May 31, 2013	Nutrient Management Plan annual update (2013)	
May 2013	Overflow/Bypass Report	Dry weather bypass; DMR notes algae in effluent on May 14 with no additional detail
May 2013	Duty to Report Noncompliance	Daily Total Suspended Solids % removal (1 day); <i>E. coli</i> monitoring (2 weeks); Total Nitrogen & Total Phosphorus monitoring; Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Nutrient Management Plan submission requirement (8 violations); Nutrient Management Plan annual update (2012 & 2013)
June 1 – June 30, 2013	Nutrient Management Plan submission requirement	
June 1 – June 30, 2013	Nutrient Management Plan annual update (2012)	
June 1 – June 30, 2013	Nutrient Management Plan annual update (2013)	

Dates of Violation	Permit Requirement Violated	Additional Detail of Violation
June 2013	Duty to Report Noncompliance	Total Nitrogen & Total Phosphorus monitoring; Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; quarterly nutrient monitoring (8 violations); Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012 & 2013)
July 1 – July 31, 2013	Nutrient Management Plan submission requirement	
July 1 – July 31, 2013	Nutrient Management Plan annual update (2012)	
July 1 – July 31, 2013	Nutrient Management Plan annual update (2013)	
July 2013	Duty to Report Noncompliance	Total Nitrogen & Total Phosphorus monitoring; Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012 & 2013)
August 1 – August 31, 2013	Nutrient Management Plan submission requirement	
August 1 – August 31, 2013	Nutrient Management Plan annual update (2012)	
August 1 – August 31, 2013	Nutrient Management Plan annual update (2013)	
August 2013	Duty to Report Noncompliance	Total Nitrogen & Total Phosphorus monitoring; Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012 & 2013)
September 1 – September 30, 2013	Nutrient Management Plan submission requirement	
September 1 – September 30, 2013	Nutrient Management Plan annual update (2012)	

Dates of Violation	Permit Requirement Violated	Additional Detail of Violation
September 1 – September 30, 2013	Nutrient Management Plan annual update (2013)	
September 2013	Duty to Report Noncompliance	D.O. mg/L daily min.; Total Nitrogen & Total Phosphorus monitoring; Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012 & 2013);
October 1 – October 31, 2013	Nutrient Management Plan submission requirement	
October 1 – October 31, 2013	Nutrient Management Plan annual update (2012)	
October 1 – October 31, 2013	Nutrient Management Plan annual update (2013)	
October 2013	Duty to Report Noncompliance	Total Nitrogen & Total Phosphorus monitoring; Total Kjeldahl Nitrogen & Insoluble Phosphorus monitoring; Nutrient Management Plan submission requirement; Nutrient Management Plan annual update (2012 & 2013)

84. Each reporting violation and each failure to report non-compliance constitutes a separate violation of the permit and the Clean Water Act.

85. Plaintiff and its members have suffered damage and continue to suffer damage as a result of Defendant's actions described in this count. These actual and potential injuries have been, are being, and will continue to be caused by the failure to accurately report the discharges from the sewage collection system into waters of the United States. The relief sought herein will redress the harms to the Harpeth River Watershed Association and its members caused by Defendant's discharges. Their injuries will not be redressed except by an order from this Court

requiring Defendant to take immediate and substantial action to accurately report its operations and to comply with such other relief as this Court deems necessary.

COUNT 4: INACCURATE MEASUREMENT AND FLOW MONITORING

86. Paragraphs 1-85 are hereby incorporated by reference as if rewritten in their entirety.

87. Defendant has violated and continues to violate Permit §1.1 and § 1.2.1, which states, “Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements is consistent with accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than plus or minus 10% from the true discharge rates throughout the range of expected discharge volumes.” *Accord Cartwright Creek NPDES Permit § 1.3.6 (2010)* (“The permittee must use the correct detection levels in all analytical testing required in the permit.”).

88. Defendant has violated and continues to violate Permit § 2.1.4, which instructs that, “The permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance also includes adequate laboratory and process controls and appropriate quality assurance procedures.” *Cartwright Creek NPDES Permit § 2.1.4(a) (2010)*. *Accord* Tenn. R. & Regs. 400-40-05-.07(2)(c) (2014).

89. Defendant's permit requires it to accurately monitor its influent raw wastewater and treated effluent flows, and it must do so continuously seven days per week. *Cartwright Creek NPDES Permit* § 1.1 (2010). *See also* Rationale § R7.1 (Flow).

90. This is important because flow is monitored and used to calculate contaminant mass loading rates." *Rationale* § R7.1 (Flow).

91. For years, the influent data reported by Cartwright Creek to TDEC were unreliable because the operator put a "contraption" in the headworks chamber. Although the trashcan over the influent sampler was removed in 2011, Cartwright Creek continues to have a very serious and significant Inflow and Infiltration ("I/I") problem.

92. I/I refers to excess water in the sewer system, usually related to an aging infrastructure that needs maintenance or replacement. One effect of I/I is that, because of too much dilution, the treatment system cannot remove enough Total Suspended Solids or Biochemical Oxygen Demand to meet a permit requirements (such as percentage removal or pounds per day). As a result, an I/I problem may mask significant violations of a permittee's effluent limitations. On average, flow through this sewage treatment plant is double its design capacity.

93. Because of the I/I problem, Cartwright Creek's data are questionable, suggesting additional permit violations.

94. In other words, due to Defendant's inaccurate flow measuring capacity, it not presently possible to determine with accuracy the amounts of pollutants discharged.

95. Since at least 2001 if not earlier, Defendant's influent sampling data have been and continue to be inaccurate.

96. Each day that Defendant operates its plant without an accurate flow mechanism is a separate violation of its permit and of the Clean Water Act and implicates the effluent limitations and related reporting violations. Such violations are likely to continue. Plaintiff and its members have suffered damage and continue to suffer damage as a result of Defendant's actions described in this count. These actual and potential injuries have been, are being, and will continue to be caused by the inaccurate measurement of pollutants into waters of the United States. The relief sought herein will redress the harms to the Harpeth River Watershed Association and its members caused by Defendant's discharges. Their injuries will not be redressed except by an order from this Court requiring Defendant to take immediate and substantial action to accurately determine the character of its discharges of pollutants into the Harpeth River and to comply with such other relief as this Court deems necessary.

**COUNT 5: FAILURE TO DEVELOP OR IMPLEMENT
A NUTRIENT MANAGEMENT PLAN**

97. Paragraphs 1-96 are hereby incorporated by reference as if rewritten in their entirety.

98. Defendant has failed to develop or implement a Nutrient Management Plan ("NMP") pursuant to the requirements of Permit § 3.5 and Attachment 1.

99. Defendant's Nutrient Management Plan was supposed to have been submitted within nine months of the permit's effective date. Defendant has also been required to update the report each year by February 15.

100. Defendant's permit was never amended or modified to remove the duty to develop and implement a Nutrient Management Plan according to Permit § 3.5 and Attachment 1.

101. Defendant did not prepare or implement a plan pursuant to Permit § 3.5 and Attachment 1, nor did it submit reports related to the Nutrient Management Plan to TDEC in February 2012, February 2013, or February 2014.

102. Each day Defendant has operated without a Nutrient Management Plan is a separate violation of the permit and of the Clean Water Act, and each failure to report on its Nutrient Management Plan to TDEC is a separate violation of the Clean Water Act.

103. This violation is likely to continue. Plaintiff and its members have suffered damage and continue to suffer damage as a result of Defendant's actions described in this count. These actual and potential injuries have been, are being, and will continue to be caused by the permit non-compliance that would limit pollutants into waters of the United States. The relief sought herein will redress the harms to the Harpeth River Watershed Association and its members caused by Defendant's discharges. Their injuries will not be redressed except by an order from this Court requiring Defendant to take immediate and substantial action to stop the excessive discharge of pollutants into the Harpeth River and to comply with such other relief as this Court deems necessary.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

- a. Issue service of process issue as authorized by law;
- b. Issue a declaratory judgment stating that Defendant has violated and is continuing to violate the Clean Water Act with its recurring illegal discharges into the Harpeth River;
- c. Order injunctive relief that temporarily and permanently enjoins Defendant from committing any further violations of the Clean Water Act or other

applicable laws, requires Defendant to remove or otherwise remedy the discharges and damage to waters of the United States, and ensured that Defendant will come into compliance and remain in compliance with applicable laws and regulations, by ordering that Defendant:

- i. Develop and implement a Nutrient Management Plan;
- ii. Establish a compliance schedule for limiting overflows, adopt a proactive approach to identifying overflow, and establish a public awareness mechanism for overflows, such as reporting them on Defendant's website;
- iii. Install new flow meter(s);
- iv. Establish a uniform protocol for monitoring and sampling;
- v. Establish programs to ensure future compliance, such as a Capacity, Management, Operation and Maintenance (CMOM) Programs, like those listed in EPA's § 308 Evaluation: Mapping Program, Grease Control Program, Capacity Assurance Program, Preventative Maintenance and Inspection Programs, Standard operating procedures (SORP) (*e.g.*, Sewage Overflow Response Plan);
- vi. Order Defendant to conduct additional monitoring to remedy, reduce, or offset the harm caused by its failure to implement a nutrient management plan for the last four years, leaving the State of Tennessee and the public without years' of data to understand the impact of Defendant's past conduct on the Harpeth River;
- vii. Order Defendant to allow third-party inspection of the operation and testing; and

- viii. Require Defendant to design and install adequate control technology to abate the continuing discharges of pollutants;
- d. Assess civil penalties against Defendant of up to \$37,500 per violation per day pursuant to 33 U.S.C. §§ 1319(d), 1365(a), and 40 C.F.R. § 19.4, as the Court deems necessary;
- e. Order an award of litigation costs, including reasonable attorneys' fees and expert witness fees, to Plaintiff pursuant to 33 U.S.C. § 1365(d); and
- f. Order such other and further relief as this Court deems just and equitable.

Respectfully submitted this 28TH day of August 2014,



DELTA ANNE DAVIS
BPR No. 010211
Managing Attorney
SOUTHERN ENVIRONMENTAL LAW CENTER
2 Victory Avenue, Suite 500
Nashville, TN 37213
adavis@selctn.org
(615) 921-9470
(615) 921-8011 [Facsimile]



ANNE E. PASSINO
BPR No. 027456
Staff Attorney
SOUTHERN ENVIRONMENTAL LAW CENTER
2 Victory Avenue, Suite 500
Nashville, TN 37213
apassino@selctn.org
(615) 921-9470
(615) 921-8011 [Facsimile]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Complaint has been served via electronic mail and first class U.S. mail to:

Henry M. Walker
Bradley Arant Boult Cummings LLP
Roundabout Plaza
1600 Division Street, Suite 700
Nashville, TN 37203

Christopher A. Bowles
Bradley Arant Boult Cummings LLP
Roundabout Plaza
1600 Division Street, Suite 700
Nashville, TN 37203



DELTA ANNE DAVIS